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In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 557

UNITED STATES OF AMERICA, PETITIONER

v.

MICHAEL OBERMEIER

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit in so far as it reversed respondent's conviction on the first two counts of a three-count indictment, charging him with knowingly making false statements under oath in a matter relating to naturalization and citizenship, on the ground that prosecution of the offenses charged in those counts was barred by limitations.

OPINION BELOW

The opinion of the Court of Appeals (R. 245-270) is not yet reported. The opinion of the District Court (R. 230-238) is not reported.

JURISDICTION

The judgment of the Court of Appeals was entered on December 20, 1950 (R. 271). On January 17, 1951, by order of Mr. Justice Jackson, the time within which to file this petition for a writ of certiorari was extended to February 18, 1951. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1). See also Rules 37(b)(2) and 45(a), F. R. Crim. P.

QUESTIONS PRESENTED

1. Whether the clause in Section 21 of the 1948 statute revising Title 18, U.S.C., effective September 1, 1948, preserving "rights or liabilities now existing," and the general saving statute (1 U.S.C. 109) operated to preserve (after the reduction in the 1948 revision of the period of limitation to three years) the former five year period which was applicable at the time of the commission of the offenses charged in counts 1 and 2.

2. Whether the offense of knowingly making a false statement under oath in a naturalization proceeding is within the purview of the wartime statute suspending the running, until three years after the termination of hostilities as proclaimed by the President (i.e., until December 31, 1949), of any

statute of limitations applicable to any offense "involving fraud or attempted fraud against the United States * * * in any manner."

STATUTES INVOLVED

Section 346 of the Nationality Act of 1940, c. 876, 54 Stat. 1137, 1163, 8 U.S.C. 746, which was in effect at the time of the offenses charged in counts 1 and 2, provided in pertinent part:

> (a) It is hereby made a felony for any alien or other person, whether an applicant for naturalization or citizenship, or otherwise, and whether an employee of the Government of the United States or not—
>
> (1) Knowingly to make a false statement under oath, either orally or in writing, in any case, proceeding, or matter relating to, or under, or by virtue of any law of the United States relating to naturalization or citizenship.[1]
>
> * * * * *
>
> (d) Any person violating any provision of subsection (a) of this section shall be fined not more than $5,000, or imprisoned not more than five years, or both.
>
> * * * * *

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[1] Repealed and superseded by 18 U.S.C. (1948 rev.) 1015(a): "Whoever knowingly makes any false statement under oath, in any case, proceeding, or matter relating to, or under, or by virtue of any law of the United States relating to naturalization, citizenship, or registry of aliens; * * *

* * * * *

"Shall be fined not more than $5,000 or imprisoned not more than five years, or both."

> (g) No person shall be prosecuted, tried, or punished for any crime arising under the provisions of this Act unless the indictment is found or the information is filed within five years next after the commission of such crime.

On September 1, 1948, prior to the return of the indictment on September 28, 1948, the 1948 revision of Title 18, U.S.C., became effective. Section 21 of the Act revising Title 18 (June 25, 1948, 62 Stat. 683) provides:

> The sections or parts thereof of the Revised Statutes or Statutes at Large enumerated in the following schedule are hereby repealed. Any rights or liabilities now existing under such sections or parts thereof shall not be affected by this repeal.

Among the sections so repealed was the limitation provision of Section 346(g) of the Nationality Act of 1940, *supra*.

Section 3282 of the 1948 revision of Title 18 provides:

> Except as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any offense, not capital, unless the indictment is found or the information is instituted within three years next after such offense shall have been committed.[2]

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[2] This section now covers the offense of knowingly making a false statement in a naturalization proceeding. As the Reviser's Note to Section 3282 states:

"Section 582 of title 18, U.S.C., 1940 ed., and section 746(g)

1 U.S.C. 109, which was enacted into positive law by the act of July 30, 1947, 61 Stat. 633, provides:

> *Repeal of statutes as affecting existing liabilities.* The repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing Act shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability. * * *

18 U.S.C. (1948 rev.) 3287 reads in part as follows:

> *Wartime suspension of limitations.* When the United States is at war the running of any statute of limitations applicable to any offense (1) involving fraud or attempted fraud against the United States or any agency thereof in any manner, whether by conspiracy or not, * * * shall be suspended until three years after the termination of hostilities as

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of title 8, U.S.C., 1940 ed., Aliens and Nationality, were consolidated. * * *

* * * * *

"In the consolidation of these sections the 5-year period of limitation for violations of the Nationality Code, provided for in said section 746 (g) of title 8, U.S.C., 1940 ed., Aliens and Nationality, is reduced to 3 years. There seemed no sound basis for considering 3 years adequate in the case of heinous felonies and gross frauds against the United States but inadequate for misuse of a passport or false statement to a naturalization examiner."

proclaimed by the President or by a concurrent resolution of Congress.[3]

STATEMENT

On September 28, 1948 (R. 2), respondent, an alien, was indicted (R. 7-8) on three counts charging that he knowingly and falsely stated under oath in matters relating to his naturalization that he had not at any time been a member of the Communist Party, in violation of Section 346(a)(1) of the Nationality Act of 1940 (*supra*, p. 3). The alleged false statements were made on May 26, 1945, June 2, 1945, and June 6, 1946, respectively, the first two more than three years but less than five years prior to the date the indictment was returned and the third within three years prior to that date.

Before, during, and after his trial before the court, a jury having been waived (R. 230), respondent moved to dismiss counts 1 and 2 on the ground that prosecution of the offenses alleged therein was barred by the three-year period of limitation prescribed by 18 U.S.C. (1948 rev.) 3282, *supra*, p. 4 (R. 3, 100-101, 234-235). At the opening of the trial respondent admitted by stipulation that he was a member of and affiliated with the Communist Party of the United States from 1930 to January 1, 1939 (R. 9-12, 190-191). He was found guilty on all three counts and sentenced to two

[3] The President proclaimed the termination of hostilities on December 31, 1946. 12 F. R. 1.

years' imprisonment on each, to run concurrently, and fined $1,000 on the first count (R. 4, 188).

On appeal to the Court of Appeals for the Second Circuit, the judgment was affirmed as to the third count,[4] but reversed as to the first two on the ground that prosecution of the offenses charged therein was barred by limitations. The court held that neither the general saving statute (1 U.S.C. 109, *supra,* p. 5) nor the saving clause in Section 21 of the Act of June 25, 1948, revising Title 18, U.S.C., which became effective September 1, 1948, operated to preserve the former five-year period of limitation prescribed for such offenses by Section 346(g) of the Nationality Act of 1940 (*supra,* p. 4) in the face of the express repeal of that provision by Section 21 and the substitution of the general three-year period prescribed by Section 3282 of the 1948 revision. The court concluded, upon the basis of a review of the history of saving clauses since the enactment of the Revised Statutes, that both Section 21 and 1 U.S.C. 109 preserve only substantive rights and liabilities and not statutes of limitations, which, the court said, are usually "considered no part of a 'right' or 'liability,' but as affecting the 'remedy' only." The court also rejected the Government's contention that the Wartime Suspension of Limitations Act

[4] Respondent has filed a petition for a writ of certiorari (No. 505) to review the judgment below in so far as it affirmed his conviction on count 3, and the Government has filed a brief in opposition thereto.

(18 U.S.C. (1948) 3287, *supra*, pp. 5-6) preserved the right to prosecute the first two counts. The court thought that fraud is not an ingredient of of the offense of false swearing in a naturalization proceeding and that the suspension act is therefore inapplicable. (R. 257-270.)

SPECIFICATION OF ERRORS TO BE URGED

The Court of Appeals erred:

1. In holding that the saving clause in Section 21 of the Act of June 25, 1948, revising Title 18, U.S.C., does not preserve the five-year period of limitations which was applicable at the time of the offenses charged in counts 1 and 2 of the indictment.

2. In holding that the general saving statute, 1 U.S.C. 109, does not preserve the five-year period of limitations which was applicable at the time of the offenses charged in counts 1 and 2.

3. In holding that the wartime suspension of limitations statute does not apply to the offense of knowingly making a false statement under oath in a naturalization proceeding.

4. In reversing respondent's conviction on counts 1 and 2.

REASONS FOR GRANTING THE WRIT

1. *The question is important.* The decision below, in so far as it reversed respondent's conviction on counts 1 and 2, presents a question of substantial importance in determining the period of limitations applicable to many offenses committed before

but prosecuted after the 1948 revision of the Criminal Code. The problem is of a recurring nature, as is emphasized by the fact that the ruling below is in direct conflict with the decision of the United States District Court for the Northern District of California in *United States* v. *Bridges,* 86 F. Supp. 922. The indictment in that case charged the defendants in the first count with a conspiracy, ending more than three years prior to the return of the indictment on May 25, 1949 (see 86 F. Supp. at 932), to defraud the United States in the proper administration of the naturalization laws by falsely and fraudulently stating to the court in Bridges' naturalization proceeding that he had never belonged to the Communist Party. The second count charged Bridges alone with falsely swearing before the naturalization court on September 17, 1945, that he had never been a member of the Party, in violation of Section 346(a)(1) of the Nationality Act of 1940, 8 U.S.C. 746(a)(1) (*supra,* p. 3), and the third count charged Bridges' co-defendants with encouraging, aiding, advising, and assisting him in obtaining a certificate of naturalization, knowing that it was procured by means of such false and fraudulent representations concerning Bridges' membership in the Party, in violation of Section 346 (a)(5) of the Nationality Act, 8 U.S.C. 746(a)(5). The two substantive counts thus involved the identical situation involved in the instant case, i.e., the indictment charged of-

fenses committed while the five-year limitation statute (Section 346(g) of the Nationality Act, 8 U.S.C. 746(g), *supra*, p. 4) was in effect but was not returned until more than three years later and after the effective date of the 1948 revision, which reduced the period to three years.

In overruling the defendants' plea of limitations based upon Section 3282 of the 1948 revision of Title 18 (*supra*, p. 4), the District Court in the *Bridges* case held (1) that the wartime suspension of limitations statute (18 U.S.C. (1948) 3287, *supra*, pp. 5-6) applied to both the conspiracy and substantive charges, and (2) that Section 21 of the Act of June 25, 1948 (*supra*, p. 4), revising Title 18 preserved as to the substantive counts the five-year period of limitations provided by Section 346(g) of the Nationality Act.[5] The importance of the question under the suspension statute was recognized by the Court of Appeals for the Ninth Circuit in its opinion vacating an order of the District Court revoking Bridges' bail pending appeal from his conviction; it said that "a seriously debatable question is presented for determination by this court and probably by the Supreme Court." *Bridges* v. *United States*, 184 F. 2d 881, 883-884.

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[5] The court therefore found it unnecessary to consider the Government's additional contention that the general saving statute, 1 U.S.C. 109, preserved the prior five year period of limitations.

2. *The decision below is erroneous.*

(a) *Section 21.* The provisions defining the offense here involved (8 U.S.C. 746(a)(1)) and prescribing a five-year period of limitations therefor (8 U.S.C. 746(g)) were both expressly repealed by Section 21 of the Act of June 25, 1948, 62 Stat. 683, 862, enacting the new Criminal Code. But Section 21 contains a saving clause which provides that "Any rights or liabilities now existing" under the repealed sections "shall not be affected by this repeal." The acts of which respondent was convicted were committed in 1945 while these provisions were in effect, and there is no dispute that the saving clause of Section 21 preserved the substantive provision of 746(a)(1). The issue here is whether it also preserved the five-year period of limitations applicable to offenses committed prior to its enactment, as the Government contends, or whether the new three-year period prescribed by the 1948 revision (18 U.S.C. 3282) is applicable even to offenses committed more than three but less than five years before its effective date, as the Court of Appeals held.

If the court below is right in its construction, it would mean that the enactment of the new codification on June 25, 1948, automatically closed the door to prosecutions of all offenses falling within this category. Surely if Congress had intended so drastic an amnesty, it would have made explicit provision therefor. On the contrary, the saving

clause of Section 21 expresses a clear legislative intention not to affect existing "rights or liabilities"—which must include not only the substantive "liability" of the defendant but also the "right" of the Government to prosecute within the period of limitations in force when the offense was committed. The word "liability" in Section 21, if given a practical, common-sense construction, certainly includes the "liability" of a defendant to be tried and, if convicted, punished in accordance with the terms of the substantive provision defining the offense. It makes an absurdity of Section 21 to attribute to Congress a purpose of preserving the criminal character of a defendant's acts, and at the same time giving him an absolute immunity from prosecution. Yet that is the practical result of the construction made by the court below.

The court below laid great emphasis on the fact that in enacting the Revised Statutes of 1874, and again in enacting the Criminal Code in 1909, Congress included, in addition to a general saving provision, another provision specifically preserving preexisting periods of limitations applicable to offenses committed prior to the revision and repeal of the old law.[6] From this the court reasoned that since special provisions were deemed necessary on those occasions to save statutes of limitations

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[6] These sections of the Revised Statutes and the Criminal Code are quoted in the opinion below, R. 259-261.

in prosecutions under the old law, if Congress had intended to save the old five-year statute of limitations (8 U.S.C. 746(g)), it would have so stated in framing Section 21 of the 1948 Act. The difficulty with this reasoning is that it takes no account of the broad and all-embracing language of Section 21 to include "any rights or liabilities now existing" under the repealed substantive provisions. The comprehensive breadth of this language itself reflects a legislative purpose of preserving the complete status quo with respect to alleged offenses which might be prosecuted under the repealed provisions. To be sure, no further illumination of the scope and design of Section 21 is to be found in the Reviser's Notes or other legislative materials. It seems to us, however, that this silence in the legislative history does not support the construction of Section 21 urged by respondent. On the contrary, in view of the practical incongruities which result from acceptance of respondent's construction, it should be adopted only if compelled by the clearest evidence that such was the purpose of Congress—evidence which is wholly lacking here. As the District Court in the *Bridges* case said on this point (86 F. Supp. 922, 927):

> If defendant's contention were correct then we would be confronted with the anomalous situation of keeping alive a right, while at the same time failing to preserve the remedy afforded by the applicable Statute of Limitations.

The ruling below appears to conflict in principle with *Lovely* v. *United States,* 175 F. 2d 312 (C.A. 4), certiorari denied, 338 U.S. 834. In the latter case the Court of Appeals for the Fourth Circuit held that the penalty for rape prescribed by the old law is saved by Section 21 where the offense was committed before the recodification. The court there construed the word "liability" in Section 21 in its broadest sense to include the punishment, or remedy as well as the substantive crime. Cf. *United States* v. *Reisinger,* 128 U.S. 398, 403. The broad construction of Section 21 made by the court in the *Lovely* case is in sharp contrast with the narrow view adopted by the court below in the present case, construing "liability" as not including anything except the bare bones of the substantive offense.

None of the authorities cited by the court below warrants the holding that Section 21 does not preserve the effect of the old five-year statute of limitations in force when the crimes charged were allegedly committed. To hold that the new three-year period prescribed by the 1948 revision is applicable to such antecedent offenses is to give a retroactive effect to a provision which in terms does not appear to have any such backward application, in disregard of the familiar canon of construction that "all statutes are to be considered prospective, unless the language is express to the contrary, or there is a necessary implication to

that effect." *Fullerton-Krueger Lumber Company* v. *Northern Pacific Railway Co.*, 266 U.S. 435, 437; *Russell* v. *United States*, 278 U.S. 181, 187; *Claridge Apartments Co.* v. *Commissioner*, 323 U.S. 141, 164; *Hiatt* v. *Hilliard*, 180 F. 2d 453 (C.A. 5).

Section 3282 of the 1948 revision, prescribing the new three-year general period of limitations, contains no language whatsoever indicating a purpose to give it retroactive effect. On the contrary its text, quoted below,[7] affirmatively shows that it was intended to apply only to such offenses as would be committed after its enactment.[8]

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[7] "Except as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any offense, not capital, unless the indictment is found or the information is instituted within three years next after such offense *shall have been committed.*" [Italics supplied.]

[8] Even apart from Section 21, the general saving statute, 1 U.S.C. 109, has the effect of saving the five-year period of limitations in force at the time the offenses here involved were committed. This provision, quoted, *supra*, p. 5, has been held by the Court of Appeals for the Fifth Circuit as saving the provision under the old Criminal Code relating to commutation of sentence for good conduct, 18 U.S.C. 710. The court refused to apply the new Code sections (18 U.S.C. 4161 and 4165) to time earned for good conduct before their enactment, applying the rule that a statute should not be given retroactive effect unless Congress has clearly directed otherwise. *Hiatt* v. *Hilliard*, 180 F. 2d 453. The Court of Appeals for the Second Circuit has also held that where a repealed section of the Criminal Code provided for a longer sentence than the new section which came into effect after the commission of the crime, the longer sentence was saved by virtue of Section 109. *United States* v. *Kirby*, 176 F. 2d 101 (C.A. 2). It would seem that if such elements affecting the "remedy" are saved, so, too, is the statute of limitations which the court below stated is part of the "remedy".

(b) *The Wartime Suspension of Limitations Act.* A further basis for sustaining the first two counts of the indictment is to be found in the following provision of the Wartime Suspension of Limitations Act:

> When the United States is at war the running of any statute of limitations applicable to any offense (1) involving fraud or attempted fraud against the United States or any agency thereof in any manner, whether by conspiracy or not * * * shall be suspended until three years after the termination of hostilities * * *.

This language had the effect of tolling the running of the statute of limitations until December 31, 1949,[9] even if the three-year statute in the new Criminal Code should be deemed to have replaced the five-year statute in effect under the old law.

The court below held that fraud is not an ingredient of the offense of false swearing as defined by the statute and that therefore the suspension statute does not apply, citing *United States* v. *Noveck,* 271 U. S. 201; *United States* v. *McElvain,* 272 U.S. 633; and *United States* v. *Scharton,* 285 U.S. 518. None of those cases, however, involved false swearing in a naturalization proceeding, but rather were concerned with perjury and false statements in income tax returns.

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[9] The termination of hostilities was proclaimed by the President of the United States on December 31, 1946 (12 F.R. 1).

In *United States* v. *Gottfried,* 165 F. 2d 360 (C.A. 2), certiorari denied, 333 U.S. 860, rehearing denied, 333 U.S. 883, the Second Circuit held that a prosecution under the so-called False Claims Statute (Section 35(A) of the Criminal Code, 18 U.S.C. [1946] 80) for making false and fraudulent statements to the O.P.A. in obtaining sugar rations [10] was saved by the suspension statute as involving fraud. Emphasizing the broad connotation of "fraud," the court there said that (165 F. 2d at 368):

> * * * it has been the law, at least since 1910, that in the statute under which this indictment was drawn, "fraud" includes any conduct, "calculated to obstruct or impair its" (the United States') "efficiency and destroy the value of its operations and reports." We see no reason for reading the words, "defrauding the United States" in the statute of limitations now in question less comprehensively; certainly there was not enough ground for that in the debates of Congress. Besides, the purpose of the amendment was not to let crimes pass unpunished which had been committed in the hurly-burly of war, an overriding motive which perfectly fits the situation at bar.

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[10] The part of Section 35(A) upon which the prosecution was based read: "Whoever shall * * * make or cause to be made any false or fraudulent statements or representations * * * in any matter within the jurisdiction of any department or agency of the United States or of any corporation in which the United States of America is a stockholder, shall be * * *."

In *Marzani* v. *United States,* 168 F. 2d 133, affirmed and reaffirmed by an equally divided court, 335 U.S. 895, 336 U.S. 922, on the other hand, the Court of Appeals for the District of Columbia Circuit said, by way of dictum, upon the basis of its interpretation of the *Noveck, McElvain* and *Scharton* decisions, *supra,* that the suspension statute does not extend the statute of limitations in respect of false and fraudulent statements in violation of Section 35(A) except in cases where the fraud results in a financial or property loss to the Government. If a mere false statement in a matter within the jurisdiction of an agency of the United States, as in the *Gottfried* case, is covered by the suspension statute, it would appear to follow *a fortiori* that the false statements involved here should also be so treated. Certainly the fraud involved in procuring or attempting to procure naturalization by false representations is as serious a matter as a false statement to the O.P.A. in procuring rations. Although the court below in this case distinguished *Gottfried* on the basis that there it had interpreted Section 35(A) of the Criminal Code as involving fraud as an ingredient of the offense, the wording of the two substantive statutes does not support such distinction. The District Court in the *Bridges* case thought, and we believe rightly, that the rationale of the *Gottfried* decision applies here. In a later case in the District Court for the Northern District of California, *United States* v. *Choy Kum,*

91 F. Supp. 769, involving a prosecution for making false statements in an application for a passport, in violation of 18 U.S.C. (1948) 1542, and for making false statements in violation of the false claims statute, the court also adopted the *Gottfried* view.

"Fraud," in relation to dealings with the United States, has long been given a broad connotation. In *United States* v. *Gilliland,* 312 U. S. 86, the Court construed the false statement provision of Section 35(A) of the Criminal Code as designed "to protect the authorized functions of governmental departments and agencies from the perversion which might result from the deceptive practices described" and as reaching false and fraudulent statements not involving pecuniary or property loss to the United States (p. 93).[11]

So too, the word "fraud" as used in the denaturalization statute has been broadly construed. In *Knauer* v. *United States,* 328 U. S. 654, 657, the Court said:

> * * * The first and crucial issue in the case is whether Knauer swore falsely and committed a fraud when he promised under oath to foreswear allegiance to the German Reich and to transfer his allegiance to this nation. Fraud connotes perjury, falsification, concealment, misrepresentation.[12]

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[11] See also *Haas* v. *Henkel,* 216 U.S. 462, 479-480; *Hammerschmidt* v. *United States,* 265 U.S. 182, 188.

[12] See also *United States* v. *Ness,* 245 U.S. 319, 324, 327; *Johannessen* v. *United States,* 225 U.S. 227, 241, 242.

That Congress has always considered the facts on which counts 1 and 2 are based as constituting fraud against the United States is clear (*Knauer* v. *United States, supra,* at p. 672); and as the penal provisions of the Nationality Act are obviously intended to put teeth in the administration of that act, the ingredient of fraud is implicit in this penal section.

Surely, knowingly to make a false statement under oath in a naturalization proceeding is an "offense * * * involving fraud" within the meaning of 18 U.S.C. (1948 rev.) 3287. The District Court in the *Bridges* case gave a generic meaning to the word "fraud" as used in the suspension statute (86 F. Supp. at 927).[13] The legislative history of that statute shows that Congress used the word in that sense, and this usage accords with the judicial interpretation of statutes dealing with fraud against the United States.

There is nothing in the earlier *Noveck, McElvain* and *Scharton* cases to support the view that either the statutes involved there or the present suspension statute were intended to apply only to offenses involving pecuniary or property loss to

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[13] "The government contends that the Wartime Suspension of Limitations Act is equally applicable to all three counts on the general theory that fraud is implicit in each count. * * * This contention is no doubt sound for when we examine the statute in question * * * it is manifest that the language used is broad, sweeping and all-inclusive as to fraud in a generic sense, perpetrated 'in any manner, whether by conspiracy or not.'"

the United States. It is significant that in those cases the Court was concerned with provisos in limitation statutes which allowed longer periods of limitation for specified offenses. The proviso involved in the *Noveck* and *McElvain* cases was added in 1921, after the first World War was over, as an amendment to the general statute of limitations in R.S. 1044. The proviso involved in *Scharton* was contained in a section of the Revenue Act of 1926 fixing three years as the period of limitations upon prosecutions of offenses against the internal revenue laws. Each of the provisos allowed six years for the prosecution of offenses "involving the defrauding or attempts to defraud the United States or any agency thereof, whether by conspiracy or not, and in any manner." In both the *McElvain* (272 U. S. at 639) and *Scharton* (285 U. S. at 521) cases, the Court said that a strict construction of the provisos was required because they excepted a special class of cases from the operation of the general limitation provision. The present suspension statute, on the other hand, originated as independent legislation and is therefore not subject to the rule of statutory construction applied in the earlier cases. Rather, it should be construed so as to give effect to its plain purpose. It was originally enacted in 1942, in the early days of the war. And the legislative history shows that it was designed to prevent the running of limitations against offenses at a time when the

law-enforcement branch of the Government was occupied with duties in connection with the war effort.[14]

It is important, in considering what Congress intended in the present suspension act, to recall that Congress did not stop to express disagreement with the narrow construction which this Court gave the 1921 proviso. As this Court noted in *Braverman* v. *United States,* 317 U. S. 49, 54, 55, Congress wrote specific provisions into the Revenue Act of 1932 for the express purpose of overcoming those decisions. It is unreasonable to believe that in 1942 Congress wrote into legislation a

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[14] H. Rep. No. 2051 and S. Rep. No. 1544, 77th Cong., 2d sess., wherein both committees stated:

"During normal times the present 3-year statute of limitations may afford the Department of Justice sufficient time to investigate, discover, and gather evidence to prosecute frauds against the Government. The United States, however, is engaged in a gigantic war program. Huge sums of money are being expended for materials and equipment in order to carry on the war successfully. Although steps have been taken to prevent and to prosecute frauds against the Government, it is recognized that in the varied dealings opportunities will no doubt be presented for unscrupulous persons to defraud the Government or some agency. These frauds may be difficult to discover as is often true of this type of offense and many of them may not come to light for some time to come. The law-enforcement branch of the Government is also busily engaged in its many duties, including the enforcement of the espionage, sabotage, and other laws.

"Your committee is of the opinion that action should be taken at this time to extend the limitations statute so that frauds may be discovered and punished even after the termination of the present conflict, and to insure that the limitations statute will not operate, under stress of present-day events, for the protection of those who would defraud or attempt to defraud the United States."

construction which was so narrow that earlier legislation had already been enacted to overcome it.

CONCLUSION

For the reasons stated, it is respectfully submitted that this petition for a writ of certiorari should be granted.

PHILIP B. PERLMAN,
Solicitor General.

FEBRUARY 1951.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1951 931119 871